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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,624	07/25/2001	Ronald G. Rodick	AVERP3012US	6464

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EXAMINER

GARBE, STEPHEN P

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,624

Applicant(s)

RODICK, RONALD G.

Examiner

Stephen Garbe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-20 and 22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5&10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's election of the species of Group II, with traverse, is noted. The traversal is not persuasive because species are virtually always independent inventions. See 806.04(b). The disclosed and claimed species are clearly independent inventions because they are not related in any of the ways set forth in MPEP §§ 806.05-806.05(h). Furthermore, it is clear from reading the disclosure that the species are not related because there is no disclosure that they are used together, that one is used to make the other, or any other such relationship. That a generic claim can be written is not evidence that the inventions are related. Applicant's allegation that it has not been established that there are claims reciting mutually exclusive characteristics, as required by MPEP 806.04(f), is not understood, since Applicant, himself, has identified such claims, i.e., claims 8, 9, 21, and 22. Thus, the traversal is not persuasive.

2. The restriction requirement is, hereby, made Final.

3. Claims 8 and 21 are withdrawn from consideration under 37 CFR 1.142(b) as not being drawn to the elected species.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no enabling disclosure of a container free of a

reclosure strip since the disclosed container has strips of adhesive and release material that are used for reclosing it.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 19, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "enclosure" renders these claims indefinite because it is inaccurate in that the elements recited as part of the enclosure do not enclose anything. Thus, it appears that "enclosure" should be changed to "closure."

8. Claims 2-7, 9-18, 20, 22-26, and 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are indefinite for the same reason as their respective parent claims because they include all of the limitations of their parent claims.

9. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is indefinite because it is inconsistent with claim 1. Claim 1 states that the peel strength is "up to about 1 pound per inch" while this claim requires a peel strength "greater than one pound per inch." Clarification is required.

10. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention. This claim is indefinite because it is inconsistent with claim 19. Claim 19 states that the peel strength is "up to about 1 pound per inch" while this claim requires a peel strength "greater than one pound per inch." Clarification is required.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-5, 9, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck, United States Patent No. 4,871,265. Applicant is advised that, even though the first line of claim 1 recites only a resealable closure for a container, claim 1 is being interpreted as requiring the combination of a container and a resealable closure because the body of the claim requires the closure elements to be attached to a container.

Peck discloses all features except for the claimed peel strength. Note Figures 1 and 3 which disclose a container having a main body portion located below fold line 22 and an integral extended body portion located above fold line 22. Peck's extended body portion is a "fold over flap" as broadly recited in claim 16. The body of the container includes a pressure sensitive adhesive 34, and the extended portion includes a release surface 48 which "provides a desired controlled or preselected adhesion release surface." (col. 3, lines 27-29). The peel strength of the adhesive would have been an obvious matter of routine experimentation and mechanical expedience for one

of ordinary skill in the art because Peck states that his invention "provides a desired controlled or preselected adhesion release surface."

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peck, United States Patent No. 4,871,265, as applied to claim 1. Furthermore, it would have been obvious to use any known pressure sensitive adhesive with Peck's container.

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peck, United States Patent No. 4,871,265, as applied to claim 1, and further in view of Howard, United States Patent No. 4,495,318. It would have been obvious to provide Peck's adhesive in the form of microspheres, as taught by Howard, because the use of microspheres for such purposes is old and well-known.

15. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck, United States Patent No. 4,871,265, as applied to claim 1. Furthermore, the type of material used for the release surface would have been an obvious matter of choice because all of the claimed materials are old and well-known release materials and are equivalents.

16. Claims 19, 20, 22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck, United States Patent No. 4,871,265. Applicant is advised that, even though the first line of claim 19 recites only a resealable closure for a container, it is being interpreted as requiring the combination of a container and a resealable closure because the body of the claim requires the closure elements to be attached to a container. Note Figures 1 and 3 which disclose a container having a main body portion located below fold line 22 and an integral extended body portion located above fold line

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22. Peck's extended body portion is a "fold over flap" as broadly recited. The body of the container includes a pressure sensitive adhesive 34, and the extended portion includes a release surface 48 which "provides a desired controlled or preselected adhesion release surface." (col. 3, lines 27-29). The peel strength of the adhesive would have been an obvious matter of routine experimentation and mechanical expedience for one of ordinary skill in the art because Peck states that his invention "provides a desired controlled or preselected adhesion release surface." The type of material used for the adhesive and the release surface would have been an obvious matter of choice because all claimed materials are old and well-known.

17. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peck, United States Patent No. 4,871,265, as applied to claim 19, and further in view of Howard, United States Patent No. 4,495,318. It would have been obvious to provide Peck's adhesive in the form of microspheres, as taught by Howard, because the use of microspheres for such purposes is old and well-known. The type of adhesive would have been an obvious matter of choice.

18. Claims 27-29, and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns, United States Patent No. 4,690,322. Burns discloses all claimed features including a back wall member having a flap that extends beyond the front wall member. The front wall and the flap have mating releasable adhesive and release surface elements. Furthermore, the release surface and the adhesive may be located on either the flap or the front wall. The peel strength of the adhesive would

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have been an obvious matter of routine experimentation and mechanical expedience for one of ordinary skill in the art.

19. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burns, United States Patent No. 4,690,322, as applied to claim 27, and further in view of Young, United States Patent No. 3,648,923. It would have been obvious to provide Burns' container with at least one side wall member, as taught by Young, because a side wall member would have allowed the container to be expanded to receive more contents.

20. Claims 19, 20, 22, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns, United States Patent No. 4,690,322. The peel strength of the adhesive would have been an obvious matter of routine experimentation and mechanical expedience for one of ordinary skill in the art. The type of material used for the adhesive and the release surface would have been an obvious matter of choice because all claimed materials are old and well-known.

21. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burns, United States Patent No. 4,690,322, as applied to claim 19, and further in view of Howard, United States Patent No. 4,495,318. It would have been obvious to provide Peck's adhesive in the form of microspheres, as taught by Howard, because the use of microspheres for such purposes is old and well-known. The type of adhesive would have been an obvious matter of choice.

22. Claims 1, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns, United States Patent No. 4,690,322. The peel strength of the adhesive

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would have been an obvious matter of routine experimentation and mechanical expedience for one of ordinary skill in the art.

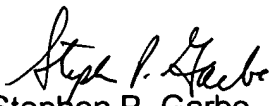
23. The remaining patents are cited to show other containers having similar features.

24. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

26. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

27. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.


Stephen P. Garbe
Primary Examiner
Group 3720